

SECTION 13. THIRD PARTY SALES AND TRANSFERS

13.1 Where only U.S. Unique Items as defined in Section 1 (Definitions) are involved, the U.S. DoD may, after consultation with the other Participants, sell, transfer title to, disclose, or transfer possession of that ESSM Production Phase Foreground Information, cooperatively acquired ESSM Production Phase Equipment, and any item produced either wholly or in part from ESSM Production Phase Foreground Information relating to U.S. Unique Items to Non-contributing Participants or Third Parties. However, the sale, transfer, or disclosure of any U.S. Unique Item that contains Advanced X-band Guidance Capability will also be subject to approval of those Contributing Participants who contributed to the development of the Advanced X-band Guidance Capability under the Addendum. The U.S. DoD recognizes the importance to the other Contributing Participants of DoD decisions on such potential sales, disclosures, and transfers and will accordingly take into account the views held by other Contributing Participants in making its decisions. The DoD recognizes that sales, disclosures, or other transfers described in this paragraph will only be made if the Government(s) of the recipient(s) agrees in writing that it will:

13.1.1 Not retransfer or permit the further retransfer of any equipment or information provided.

13.1.2 Use or permit the use of the equipment or information only for the purposes for which such equipment or information is furnished.

13.2 The U.S. DoD may, after prior consultation with the other Contributing Participants, permit sale, disclosure, or transfer by others of U.S. Unique Items as defined in Section 1 (Definitions), except that any such sale, disclosure, or transfer that includes Advanced X-band Guidance Capability will also be subject to approval of those Contributing Participants who contributed to the development of the Advanced X-band Guidance Capability under the Addendum.

13.3 Except as provided in paragraph 13.1 of this section, the Contributing Participants will not sell, transfer title to, disclose or transfer possession of ESSM Production Phase Foreground Information, cooperatively acquired ESSM Production Phase Equipment, or any item produced either wholly or in part from ESSM Production Phase Foreground Information to any Non-contributing Participant or to any Third Party without the prior written approval of all Contributing Participants. Furthermore, the Contributing Participants will not permit any such sale, disclosure, or transfer by others, including the owner of the item, without the prior written approval of all Contributing Participants. Sales, disclosures, or other transfers described in this paragraph will not be authorized by the Contributing Participants unless the government(s) of the intended recipient(s) agrees in writing that it will:

13.3.1 Not retransfer or permit the further retransfer of any equipment or information provided.

- 13.3.2 Use or permit the use of the equipment or information only for the purposes specified by the Contributing Participants.
- 13.4 Non-contributing Participants will not sell, transfer title to, disclose, or transfer possession of ESSM Production Phase Foreground Information or any item produced either wholly or in part from ESSM Production Phase Foreground Information to any Third Party.
- 13.5 The Participants will not sell, transfer title to, disclose, or transfer possession of ESSM Production Phase Background Information or noncooperatively acquired ESSM Production Phase Equipment to any Third Party without the prior written approval of the provider of such equipment or information. The provider will be solely responsible for authorizing such transfers and, as applicable, specifying the method and conditions for implementing such transfers.
- 13.6 As to paragraphs 13.3, 13.4, and 13.5 of this section, approval for sales and transfers to Non-contributing Participants or to Third Parties of ESSM Production Phase Foreground Information, cooperatively acquired ESSM Production Phase Equipment, or any item produced either wholly or in part from ESSM Production Phase Foreground Information will not be withheld except for reasons of foreign policy, national security, or national laws. The Contributing Participants will not refuse approval of such a sale or transfer to a Non-contributing Participant or to a Third Party when they would be willing to sell or transfer such equipment or information to the same Non-contributing Participant or Third Party.
- 13.7 Sales and other transfers of ESSM Production Phase Foreground Information, any item produced either wholly or in part from ESSM Production Phase Foreground Information, or any cooperatively acquired ESSM Production Phase Equipment will attract a levy to be shared among the Contributing Participants. Prior to any such sale or other transfer, the amounts of levy and the procedures for assessing and distributing levies will be determined by the Contributing Participants coordinated through the NSPSC consistent with the laws and regulations of each Contributing Participant. Any Contributing Participant may reduce or waive recovery of its share of levy in accordance with its national laws, regulations, and practices.
- 13.8 The work required to produce ESSMs, its sections, and its components for sale to Third Parties will be shared among the Contributing Participants in accordance with this MOU unless otherwise decided by the NSPSC.

SECTION 14. CLAIMS AND LIABILITY

- 14.1 Having regard to multilateral and bilateral treaties and agreements of the Participants concerning liability for claims and subject to such treaties and agreements, when applicable, for liability arising out of, or in conjunction with, activities undertaken in the performance of official duty in the execution of and for the benefit of the ESSM Production Phase, the provisions set forth below will apply:
- 14.1.1 With the exception of claims for loss or damage to ESSM Production Phase Equipment provided by a Contributing Participant under Section 8 (ESSM Production Phase Equipment), each Participant waives all claims against the other Participants for injury to or death of its military or civilian personnel and for damage to or loss of its property or cooperatively acquired property caused by personnel or agents (which do not include ESSM Production Phase Contractors) of the other Participants. If, however, such injury, death, damage, or loss results from reckless acts or reckless omissions, willful misconduct, or gross negligence of a Participant's personnel or agents, the cost of any liability will be borne by that Participant alone.
 - 14.1.2 Claims from any other persons for injury, death, damage, or loss of any kind will be processed by the most appropriate Participant, as determined by the Participants. Generally, this will be the Participant in whose country the claim arose. Any costs determined to be owed the claimant for claims pertaining to the ESSM Production Phase effort will be borne by the Contributing Participants in such proportions as determined by those Contributing Participants at that time. If however, such injury, death, damage, or loss results from reckless acts or reckless omissions, willful misconduct, or gross negligence of a Participant's or Participants' personnel or agents, the cost of any liability will be borne by that (those) Participant(s) alone.
 - 14.1.3 In the case of damage caused by or to cooperatively acquired property of the Participants, where the cost of making good such damage is not recoverable from other persons, such cost will be borne by the Contributing Participants in such proportions as they determine at that time.
 - 14.1.4 Claims arising under any Contract awarded pursuant to Section 6 (Contractual Provisions) will be resolved in accordance with the provisions of the Contract. The Participants will not indemnify Contractors against liability claims by any other persons. However, in exceptional circumstances (e.g., involving unduly hazardous activity where the cost of insurance is excessively high), the Participants may consider whether to indemnify Contractors against liability claims by any other persons.

SECTION 15. ACCESSION OF NON-CONTRIBUTING PARTICIPANTS

- 15.1 Upon its request, a Non-contributing Participant will be permitted to accede to Contributing Participant status. The accession of a Non-contributing Participant to the status of a Contributing Participant will require an amendment to this MOU.

SECTION 16. PARTICIPATION OF ADDITIONAL NATIONS

- 16.1 It is recognized that other Nations may wish to join the ESSM Production Phase.
- 16.2 Mutual approval by the Participants will be required to conduct discussions with potential additional Participants. The Participants will discuss the arrangements under which another Participant might join, including the furnishing of releasable ESSM Program information for evaluation, prior to joining. If the disclosure of ESSM Program information is necessary to conduct discussions, such disclosure will be in accordance with provisions of this MOU.
- 16.3 The Participants will jointly formulate the provisions under which additional Nations might join. The addition of new Participants in this MOU will require amendment of this MOU.

SECTION 17. CUSTOMS DUTIES, TAXES, AND SIMILAR CHARGES

- 17.1 Customs duties, taxes, and similar charges will be administered in accordance with each Participant's respective laws and regulations. Insofar as existing national laws and regulations permit, the Participants will endeavor to ensure that such readily identifiable duties, taxes and similar charges, as well as quantitative or other restrictions on imports and exports, are not imposed in connection with work carried out under the ESSM Production Phase.
- 17.2 Each Participant will endeavor to ensure that customs duties, taxes, and similar charges are administered in a manner favorable to the efficient and economical conduct of the work. If any such duties, taxes, or similar charges are levied, the Participant in whose country they are levied will bear such costs over and above that Participant's Shared Costs of this phase. If, in order to apply European Union (EU) regulations, it is necessary to levy duties, then these will be met by the EU member end recipient. To this end, parts or components of the equipment coming from outside the EU will proceed to their final destination accompanied by the relevant customs document enabling settlement of duties to take place.

SECTION 18. SETTLEMENT OF DISPUTES

- 18.1 Disputes among the Participants arising under or relating to this MOU will be resolved only by consultation among the Participants and will not be referred to an individual, to a national court, to an international tribunal, or to any other person or entity for settlement.

SECTION 19. AMENDMENTS

- 19.1 This MOU may be amended by written amendment signed by the Participants or their duly authorized representatives. Annex A (Financial Matters) Tables A-1 and A-2 may be amended by the written approval of the NSPSC to make adjustments in accordance with paragraphs 5.2 and 5.3 of Section 5 (Financial Provisions), and Tables A-3 and A-4 may be amended by the written approval of the NSPSC in accordance with paragraph 5.4 and within the Cost Ceiling limits of Section 5 (Financial Provisions). Annex B (NSPO ESSM Production Phase Staffing Requirements) may be amended by the written approval of the NSPSC.

SECTION 20. WITHDRAWAL, TERMINATION, ENTRY INTO EFFECT, AND DURATION

- 20.1 This MOU may be terminated at any time upon the mutual written approval of the Participants. In the event the Participants agree to terminate this MOU, the Participants will consult prior to the date of termination to ensure termination on the most economical and equitable terms.
- 20.2 Any Participant may withdraw from this MOU upon 180 days written notification to the other Participants. Such notice will be the subject of immediate consultation by the NSPSC to decide upon the appropriate course of action for the continuation and completion of the work described in Section 3 (Scope of Work) to the mutual satisfaction of the remaining Participants. In the event of such withdrawal, the following rules apply:
- 20.2.1 The withdrawing Participant will continue participation, financial or otherwise, up to the effective date of withdrawal.
 - 20.2.2 If requested by the remaining Participants, the work allocated to the industry of the Participant withdrawing and associated cooperatively acquired ESSM Production Phase Equipment will be transferred to the other Participants' industries.
 - 20.2.3 The withdrawing Contributing Participant will be liable for the following costs in the event of a withdrawal. The NSPSC will determine, in consultation with the withdrawing Contributing Participant, the most economical arrangements in this respect.
 - 20.2.3.1 Its share of Nonrecurring Costs in accordance with Annex A (Financial Matters) Tables A-1 and A-2.
 - 20.2.3.2 Its share of total Recurring Costs over the duration of the MOU made up of actual cost incurred and a fair and reasonable estimate of future costs as determined by the NSPSC. However, these costs will not exceed the sum of actual costs and the total remaining years ceiling costs as set forth in Section 5 (Financial Provisions).
 - 20.2.3.3 All direct costs arising as a result of cancellation of orders under Contract, including costs of any Contract termination or modification resulting from such cancellations. However, these costs will not exceed the withdrawing Contributing Participant's share of Contract costs if withdrawal had not occurred. The NSPSC, in cooperation with the withdrawing Contributing Participant, will endeavor to keep these direct costs of withdrawal as low as possible.

- 20.2.4 All ESSM Production Phase Information and rights therein received under the provisions of this MOU prior to the withdrawal will be retained by the Participants, subject to the provisions of this MOU.
- 20.2.5 If requested by the remaining Participants, the withdrawing Participant may continue to administer ESSM Production Phase Contract(s) which it awarded on behalf of the remaining Participants on a reimbursable basis.
- 20.3 If a Contributing Participant withdraws because the requirements of the development of the ESSM as specified in the documents referenced in Annex B of the Addendum are not met or due to a delay of more than two years in the development, that Contributing Participant will only be liable for his cost share to the end of the calendar year of withdrawal. The provisions of paragraph 20.2.3.2 do not apply in this case.
- 20.4 The respective rights and responsibilities of the Participants regarding Section 8 (ESSM Production Phase Equipment), Section 9 (Disclosure and Use of ESSM Production Phase Information), Section 12 (Security), Section 13 (Third Party Sales and Transfers), Section 14 (Claims and Liability), Section 18 (Settlement of Disputes), and paragraphs 20.2 and 20.4 of this section (Withdrawal, Termination, Entry into Effect, and Duration) will continue notwithstanding termination of, withdrawal from, or expiration of this MOU.
- 20.5 This MOU will enter into effect upon the signature of the authorized representative of the Secretary of Defense of the United States of America and eleven other Participants or their authorized representatives. In the event that the thirteenth prospective Participant does not sign this MOU within one hundred and eighty (180) days after it enters into effect, the Participants will immediately consult in order to negotiate required changes to this MOU so that the Participants can proceed with the ESSM Production Phase. If this MOU is not amended within ninety (90) days of entering into this consultation, it will terminate and all Shared Costs will be shared by the Participants in the same proportion as set forth in Annex A (Financial Matters) Table A-1 and Table A-2 after excluding those Participants who have not signed.
- 20.6 This MOU will remain in effect for 14 years, unless terminated under the provisions of paragraph 20.1 above, and with the limitation that placement of missile orders will not occur in the final two years. This MOU may be extended by the mutual written approval of the Participants.

The undersigned, being duly authorized, have signed this MOU in thirteen (13) original copies:

**FOR THE MINISTER OF DEFENCE
ON BEHALF OF THE DEPARTMENT
OF DEFENCE OF AUSTRALIA**


Signature

Commodore Richard Lamacraft

Name

Director General, Surface Warfare Systems
(A) (DGSWSA)

Title

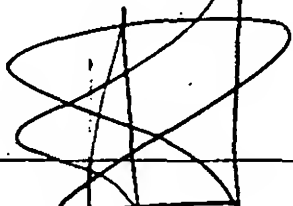
23 August 1997

Date

Canberra, Australia

Location

**FOR THE MINISTER OF NATIONAL
DEFENCE OF THE KINGDOM OF
BELGIUM**


Signature

CDR(SG) W. Goethals

Name

Assistant Chief of Staff OPS/LOG

Title

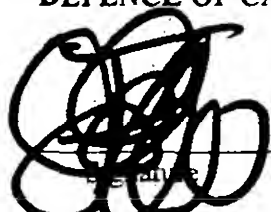
14 August 1997

Date

Brussels, Belgium

Location

**FOR THE MINISTER OF NATIONAL
DEFENCE OF CANADA**


Signature

Commodore F. W. Gibson

Name

Director General, Maritime Equipment
Program Management

Title

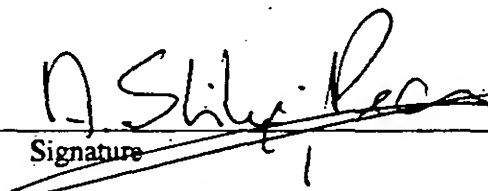
19 December 1997

Date

Hull, Quebec, Canada

Location

**FOR THE MINISTER OF DEFENCE
OF THE KINGDOM OF DENMARK**


Signature

CDR(SG) Arne Stihoj Pedersen

Name

Head of Planning Department

Title

15 August 1997

Date

Copenhagen, Denmark

Location

FOR THE FEDERAL MINISTER OF
DEFENSE OF THE FEDERAL REPUBLIC
OF GERMANY

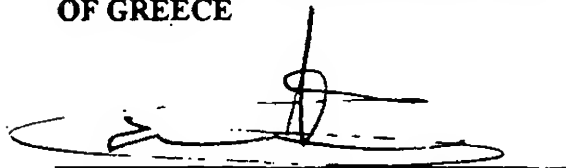

Signature

W. Frässdorf
Name
Ministry of Defence, Representative
for Germany
Title

02 January 1998
Date

Bonn, Germany
Location

FOR THE MINISTER OF DEFENCE
OF GREECE



Signature

Ioannis Sbokos
Name
General Director of the Armaments
General Directorate
Title

10 October 1997
Date

Athens, Greece
Location

FOR THE MINISTER OF NATIONAL
DEFENCE OF ITALY

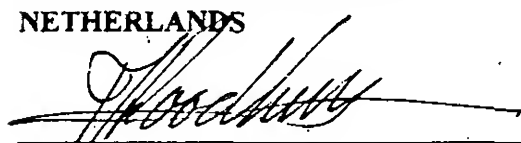

Signature

RADM Ennio Piantini
Name
Head, Studies, Project, Means and
Material Directorate
Title

22 September 1997
Date

Rome, Italy
Location

FOR THE MINISTER OF DEFENCE
OF THE KINGDOM OF THE
NETHERLANDS

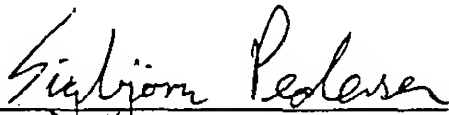

Signature

P.G. Roodhuyzen
Name
Vice-Director Material Royal
Netherlands Navy
Title

13 August 1997
Date

The Hague, The Netherlands
Location

FOR THE MINISTER OF DEFENCE
OF THE KINGDOM OF NORWAY



Signature

Captain Sigbjørn Pedersen
Name
Head of Contracts Division
Royal Norwegian Navy Material Command
Title

21 August 1997
Date

Haakonsvern, Norway
Location

FOR THE MINISTER OF DEFENSE
OF PORTUGAL


Signature

Captain Luis Silva Nunes
Name
NSPSC, Member for Portugal
Title

08 September 1997
Date

Lisbon, Portugal
Location

FOR THE MINISTER OF DEFENSE OF
THE KINGDOM OF SPAIN


Signature

Vice Almirante Vicente Cuquerella Jarillo
Name
Director de Construcciones
Navales Militares
Title

26 December 1997
Date

Madrid, Spain
Location

FOR THE MINISTER OF DEFENCE
OF TURKIYE


Signature

Brig. M. Oktay Alniak
Name
Chief of Procurement Department
MoD/Turkiye
Title

07 November 1997
Date

Ankara, Turkiye
Location

FOR THE SECRETARY OF DEFENSE
ON BEHALF OF THE DEPARTMENT
OF DEFENSE OF THE UNITED STATES
OF AMERICA


Signature

RADM Rodney P. Rempt

Name

U.S. Member, NSPSC

Title

07 August 1997

Date

Arlington, Virginia, USA

Location